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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Gerhrad Schanz

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EXAMINER

ZALASKY, KATHERINE M

ART UNIT

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1797

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/563,354	Applicant(s) SCHANZ ET AL.	
	Examiner KATHERINE ZALASKY	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20060103, 20060417</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-19, as amended 18 May 2006, are currently pending.

Information Disclosure Statement

1. The following documents, US 6,935,768 and US 2003-0039169, cited in the information disclosure statement filed on 17 April 2006 have been already submitted and considered as part of the information disclosure statement filed on 3 January 2006.

Claim Rejections - 35 USC § 103

2. **Claims 1-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemming ("10.3 Liquid-Liquid Extraction (Solvent Extraction)") in view of Ehrfeld et al. (US 2003/0039169).

Regarding **claim 1**, Hemming discloses a process for carrying out extractions (10.3.1 Physical Basics, ¶1-2) whereby:

- at least two immiscible fluid phases are mixed with one another (10.3.1 Physical Basics, ¶1-2, 10.3.2 Extraction Equipment, ¶1-3), and
- at least one of the phases contains at least one substance that is extractable with the other phase (10.3.1 Physical Basics, ¶1-2)

The reference does not disclose the process whereby the mixing is carried out by use of at least one static micromixer provided with at least one component in the form of a disk and whereby said disk has at least one inlet opening for the introduction of at least one fluid stream into a linking channel disposed in the plane of the disk and at least one outlet opening for the outflow of the fluid stream into a mixing zone disposed in the plane of the disk, whereby the inlet opening is connected with the outlet opening

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through a linking channel disposed in a communicating manner in the plane of the disk and whereby the linking channel before opening into the mixing zone is divided by microstructure units into two or more part channels, the widths of the part channels being in the millimeter to sub-millimeter range and being smaller than the width of the mixing zone.

Ehrfeld et al. discloses a static micromixer with at least one component in the form of a disk (Figure 3a, supply element 2, [0051]) and whereby said disk has:

- at least one inlet opening for the introduction of at least one fluid stream into a linking channel disposed in the plane of the disk and at least one outlet opening for the outflow of the fluid stream into a mixing zone disposed in the plane of the disk (Figure 3a, supply channel 4a, 4b, microchannels 31, 32, 33, 34, outlet at the end of microchannel 34 into opening 7, [0051])
- whereby the inlet opening is connected with the outlet opening through a linking channel disposed in a communicating manner in the plane of the disk (Figure 3a, [0051]) and
- whereby the linking channel before opening into the mixing zone is divided by microstructure units into two or more part channels, the widths being smaller than the width of the mixing zone (Figure 3a, [0051], microchannel 31, 32, 33, 34)

Ehrfeld et al. discloses that the static micromixer is simple, compact, and provides identical volumetric flow from each outlet into the mixing chamber ([0010]).

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Further, the disks may be manufactured as two plates with grooves, which, when aligned together, form circular microchannels; this design allows for simple manufacturing and reduces production costs ([0031]). While Ehrfeld et al. does not explicitly disclose that the micromixer is used for mixing fluids in an extraction process, static micromixers are well known in the art to have applications in extraction procedures (as evidenced by Fujii et al., JP 2001-182217 as translated by US 6,851,846, C2/L64-C3/L4 and by Löwe et al., WO 02/16017 as translated by US 6,935,768, C1/L7-8, L30-36).

It would have been obvious to one having ordinary skill in the art at the time of the invention to use a static micromixer to mix the fluid phases in the extraction process of Hemming, as taught by Ehrfeld et al., since static micromixers are known to be used in extraction processes in the art and the micromixer of Ehrfeld et al. provides identical volumetric flow through all microchannels and is simple and economical to produce.

Modified Hemming does not explicitly disclose that the widths of the part channels being in the millimeter to sub-millimeter range; however, since the instant specification is silent to unexpected results, it would have been obvious to one of ordinary skill in the art to change the width of the part channels, since such a modification would have involved a mere change in the size (or dimension) of a component. A change in size (dimension) is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device, and the device having the claimed dimensions would

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not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device, *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

Regarding **claim 2**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Ehrfeld et al. discloses the process characterized:

- in that the micromixer has a housing with at least 2 fluid inlets and at least one fluid outlet, and the housing contains at least one or more disk-shaped components arranged into a stack ([0051], Figure 3a, supply channels 4a, 4b, outlets at the end of microchannel 34 into opening 7)
- by the use of several disks superposed on one another so that the inlet openings form subsidiary channels for introducing the liquid phase that is to be mixed, the mixing zones together form a main channel for removing the mixed phase and the main channel and subsidiary channels extend through the stack ([0051], Figure 3a)

Regarding **claim 4**, modified Hemming discloses all of the claim limitations as set forth above, but does not explicitly disclose that the extraction agent is conveyed through the main channel and the phase containing the substance to be extracted is conveyed through at least one subsidiary channel of the micromixer. However, the substance to be extracted and the extraction agent would inherently flow from the subsidiary channels into the main channel during the mixing operation.

Regarding **claims 5-8**, modified Hemming discloses all of the claim limitations as set forth above, but does not explicitly disclose the process characterized in that:

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- at the outlet into the mixing zone the widths of the part channels of the disks amount to 1 μ m to 2 mm
- the ratio of the greatest width of the linking channel and/or the width of the inlet opening to the width of the part channels of the disks is greater than 2
- the ratio of the length to the width of the part channels of the disks is from 1:1 to 20:1
- that the ratio of the width of the mixing zone to the width of the part channels of the disks is greater than 2

However, since the instant specification is silent to unexpected results, it would have been obvious to one of ordinary skill in the art to change lengths/widths of the part channel outlets, the widths of the linking channels and the width of the mixing channel, since such a modification would have involved a mere change in the size (or dimension) of a component. A change in size (dimension) is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device, and the device having the claimed dimensions would not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device, *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

Regarding **claim 9**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Ehrfeld et al. discloses the process characterized in that:

- the disk is additionally provided with at least one flow-through opening (Figure 3a, opening 4a on supply element 2b)
- at least one of the inlet openings or flow-through openings or the mixing zone of the disk is enclosed by the plane of the disk and the linking channel is formed by an indentation (Figure 3a, opening 4a on supply element 2b, opening 7)

Regarding **claim 11**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, while Ehrfeld et al. does not explicitly disclose the process characterized in that at least one of the inlet openings or flow-through openings or the mixing zone of the disk is disposed at the edge of the disk or as a recess at the edge of the disk in the currently cited embodiment, the reference does show inlet opening disposed at the edge of disks in separate embodiments (Figure 1a, supply channel 4). Therefore, it would be obvious to one having ordinary skill in the art to change the configuration of the inlet opening in the process of modified Hemming since the change in the configuration of a device is obvious absent persuasive evidence that the particular configuration is significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Regarding **claims 12-14**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Ehrfeld et al. discloses the process characterized in that:

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- the disk is provided with at least two inlet openings for at least two different fluid streams and each inlet opening is connected with the mixing zone through a linking channel (Figure 3a, [0051], supply channels 4a, 4b)
- the disk is provided with two inlet openings for two different fluid streams, each inlet opening being connected with the mixing zone through a linking channel, and the outlet openings of the two linking channels are disposed opposite one another (Figure 3a, supply channels 4a, 4b, [0051])
- the outlet openings of the disk are arranged on a circular line (Figure 3a, openings at the end of microchannels 34)

Regarding **claim 15**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Ehrfeld et al. discloses the process characterized in that the disk is provided with additional through-holes and additional part channels that are integrated into the microstructure units and are separated from the part channels (Figure 3a, supply element 2b has through holes 4a and multiple part channels 31-34 associated with supply channels 4b). Further, it is noted that the addition of more through holes and part channels would have been obvious to one having ordinary skill in the art at the time the invention was made. Mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 124 USPQ 378, 380 (CCPA 1960). Further, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding **claims 16-17**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Ehrfeld et al. discloses the process characterized in that:

- the linking channels of the disks are formed by indentations, and the linking channels before opening into the mixing zone are divided into part channels by the microstructure units disposed on the disks (Figures 3b-d, [0051]-[0055])
- the linking channels of the disks are formed by recesses in the disks, the disks being disposed as intermediate disks between a cover disk and a bottom disk, and the linking channels before opening into the mixing zone are divided into part channels by microstructure units disposed on the cover disks and/or bottom disks (Figures 3a-d, [0051]-[0055])

Regarding **claims 18-19**, modified Hemming discloses all of the claim limitations as set forth above, but does not explicitly disclose that the flow rate of the fluid stream into the mixing zone is greater than the flow rate of the fluid mixture within the mixing zone or that the mixing in the mixing zone occurs at least in part by turbulence. However, as a fluid stream exits from a narrow channel into a large chamber, the flow rate of the stream will inherently decrease. Further, as fluid streams will be exiting into the mixing zone from multiple angles in modified Hemming, there will inherently be turbulent mixing.

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3. **Claims 1-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hemming (“10.3 Liquid-Liquid Extraction (Solvent Extraction)”) in view of Vanden Bussche et al. (US 2002/0187090).

Regarding **claim 1**, Hemming discloses a process for carrying out extractions (10.3.1 Physical Basics, ¶1-2) whereby:

- at least two immiscible fluid phases are mixed with one another (10.3.1 Physical Basics, ¶1-2, 10.3.2 Extraction Equipment, ¶1-3), and
- at least one of the phases contains at least one substance that is extractable with the other phase (10.3.1 Physical Basics, ¶1-2)

The reference does not disclose the process whereby the mixing is carried out by use of at least one static micromixer provided with at least one component in the form of a disk and whereby said disk has at least one inlet opening for the introduction of at least one fluid stream into a linking channel disposed in the plane of the disk and at least one outlet opening for the outflow of the fluid stream into a mixing zone disposed in the plane of the disk, whereby the inlet opening is connected with the outlet opening through a linking channel disposed in a communicating manner in the plane of the disk and whereby the linking channel before opening into the mixing zone is divided by microstructure units into two or more part channels, the widths of the part channels being in the millimeter to sub-millimeter range and being smaller than the width of the mixing zone.

Vanden Bussche et al. discloses a static micromixer with at least one component in the form of a plate (Figures 2-4) and whereby said plate has:

- at least one inlet opening for the introduction of at least one fluid stream into a linking channel disposed in the plane of the disk and at least one outlet opening for the outflow of the fluid stream into a mixing zone disposed in the plane of the disk (Figure 4, feed channel 42, Figure 2, linking channels 26, 28, outlet to mixing chamber 14' at 10', [0054], [0057])
- whereby the inlet opening is connected with the outlet opening through a linking channel disposed in a communicating manner in the plane of the disk (Figures 2 and 4) and
- whereby the linking channel before opening into the mixing zone is divided by microstructure units into two or more part channels, the widths of the part channels being in the millimeter to sub-millimeter range and being smaller than the width of the mixing zone (Figure 2, fluid distribution conduits 20, 22, [0004])

Vanden Bussche et al. discloses that the static micromixer is useful in mixing fluids which may have dissolved constituents or liquid/liquid mixture ([0017]) and offers the benefits of low pressure loss, small structure, and ease of fabrication ([0021]). While Vanden Bussche et al. does not explicitly disclose that the micromixer is used for mixing fluids in an extraction process, static micromixers are well known in the art to have applications in extraction procedures (as evidenced by Fujii et al., JP 2001-182217 as translated by US 6,851,846, C2/L64-C3/L4 and by Löwe et al., WO 02/16017 as translated by US 6,935,768, C1/L7-8, L30-36).

It would have been obvious to one having ordinary skill in the art at the time of the invention to use a static micromixer to mix the fluid phases in the extraction process of Hemming, as taught by Vanden Bussche et al., since static micromixers are known to be used in extraction processes in the art and the micromixer of Vanden Bussche et al. reduces the pressure loss experienced by the fluids, is compact, and is easy to fabricate.

Modified Hemming does not explicitly disclose that the plate is in the shape of a disk; however, it is well known in the art that the plate can have a variety of shapes, including circular (as evidenced by Ehrfeld et al., US 2003/0039169, Figure 3a). The change in configuration of shape of a device is obvious absent persuasive evidence that the particular configuration is significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the plate of modified Hemming to be disk shaped, as taught by Ehrfeld et al.

Regarding **claim 2**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Vanden Bussche et al. discloses the process characterized:

- in that the micromixer has a housing with at least 2 fluid inlets and at least one fluid outlet, and the housing contains at least one or more disk-shaped components arranged into a stack (Figures 4-5, feed channels 42', 26', 28', outlet 19')
- by the use of several disks superposed on one another so that the inlet openings form subsidiary channels for introducing the liquid phase that is

to be mixed, the mixing zones together form a main channel for removing the mixed phase and the main channel and subsidiary channels extend through the stack (Figures 4-5, [0057], [0063], [0064])

Regarding **claim 4**, modified Hemming discloses all of the claim limitations as set forth above, but does not explicitly disclose that the extraction agent is conveyed through the main channel and the phase containing the substance to be extracted is conveyed through at least one subsidiary channel of the micromixer. However, the substance to be extracted and the extraction agent would inherently flow from the subsidiary channels into the main channel during the mixing operation.

Regarding **claims 5-8**, modified Hemming discloses all of the claim limitations as set forth above, but does not explicitly disclose the process characterized in that:

- at the outlet into the mixing zone the widths of the part channels of the disks amount to 1 μ m to 2 mm
- the ratio of the greatest width of the linking channel and/or the width of the inlet opening to the width of the part channels of the disks is greater than 2
- the ratio of the length to the width of the part channels of the disks is from 1:1 to 20:1
- that the ratio of the width of the mixing zone to the width of the part channels of the disks is greater than 2

However, since the instant specification is silent to unexpected results, it would have been obvious to one of ordinary skill in the art to change lengths/widths of the part

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channel outlets, the widths of the linking channels and the width of the mixing channel, since such a modification would have involved a mere change in the size (or dimension) of a component. A change in size (dimension) is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device, and the device having the claimed dimensions would not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device, *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984).

Regarding **claim 9**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Vanden Bussche et al. discloses the process characterized in that:

- the disk is additionally provided with at least one flow-through opening (Figures 4-5, feed channels 42', 26', 28' on first plate 40')
- at least one of the inlet openings or flow-through openings or the mixing zone of the disk is enclosed by the plane of the disk and the linking channel is formed by an indentation (Figures 4-5, feed channels 42', 26', 28', [0039], [0041], [0042])

Regarding **claim 11**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, while Vanden Bussche et al. does not explicitly disclose the process characterized in that at least one of the inlet openings or flow-through

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openings or the mixing zone of the disk is disposed at the edge of the disk or as a recess at the edge of the disk, feed channel inlets on the edges of static micromixer disks are well known in the art (as evidenced by Ehrfeld et al., US 2003/0039169). Therefore, it would be obvious to one having ordinary skill in the art to change the configuration of the inlet opening in the process of modified Hemming since the change in the configuration of a device is obvious absent persuasive evidence that the particular configuration is significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Regarding **claims 12-14**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Vanden Bussche et al. discloses the process characterized in that:

- the disk is provided with at least two inlet openings for at least two different fluid streams and each inlet opening is connected with the mixing zone through a linking channel (Figures 3-5, feed channels 42', 26', 28' with inlet on cover plate 40', mixing zone 14')
- the disk is provided with two inlet openings for two different fluid streams, each inlet opening being connected with the mixing zone through a linking channel, and the outlet openings of the two linking channels are disposed opposite one another (Figures 3-5, feed channels 42', 26', 28' with inlet on cover plate 40', mixing zone 14')
- the outlet openings of the disk are arranged on a circular line (Figures 3-5, feed channels 42', 26', 28' with inlet on cover plate 40', mixing zone 14', Figure 1, [0027])

Regarding **claim 15**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Vanden Bussche et al. discloses the process characterized in that the disk is provided with additional through-holes and additional part channels that are integrated into the microstructure units and are separated from the part channels (Figures 3-5, each plate has a plurality of through holes and part channels, [0057], [0058]). Further, it is noted that the addition of more through holes and part channels would have been obvious to one having ordinary skill in the art at the time the invention was made. Mere duplication of parts has no patentable significance unless a new and unexpected result is produced. *In re Harza*, 124 USPQ 378, 380 (CCPA 1960). Further, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Regarding **claims 16-17**, modified Hemming discloses all of the claim limitations as set forth above. Additionally, Vanden Bussche et al. discloses the process characterized in that:

- the linking channels of the disks are formed by indentations, and the linking channels before opening into the mixing zone are divided into part channels by the microstructure units disposed on the disks (Figures 4-5, feed channels 42', 26', 28', fluid distribution channels 20', 22', [0039], [0041], [0042])
- the linking channels of the disks are formed by recesses in the disks, the disks being disposed as intermediate disks between a cover disk and a

bottom disk, and the linking channels before opening into the mixing zone are divided into part channels by microstructure units disposed on the cover disks and/or bottom disks (Figures 4-5, feed channels 42', 26', 28', fluid distribution channels 20', 22', cover plate 40, distributor plate 46 [0039], [0041], [0042])

Regarding **claims 18-19**, modified Hemming discloses all of the claim limitations as set forth above, but does not explicitly disclose that the flow rate of the fluid stream into the mixing zone is greater than the flow rate of the fluid mixture within the mixing zone or that the mixing in the mixing zone occurs at least in part by turbulence. However, as a fluid stream exits from a narrow channel into a large chamber, the flow rate of the stream will inherently decrease. Further, as fluid streams will be exiting into the mixing zone from multiple angles in modified Hemming, there will inherently be turbulent mixing (see also, [0070] of Vanden Bussche et al.).

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE ZALASKY whose telephone number is (571) 270-7064. The examiner can normally be reached on Monday-Thursday, 7:30am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vickie Kim can be reached on (571)272-0579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/KZ/

19 March 2009

/Krishnan S Menon/
Primary Examiner, Art Unit 1797